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HOUSE BILL 1184

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

LARRY A. LARRAÑAGA

AN ACT

RELATING TO MOTOR VEHICLE INSURANCE; ENACTING THE PERSONAL CHOICE AUTO INSURANCE ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 25 of this act may be cited as the "Personal Choice Auto Insurance Act".

Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS-- PURPOSES OF ACT. --

A. The legislature finds that under former law, New Mexico motorists were required to purchase liability insurance primarily for the benefit of others. To protect themselves and their family members from other motorists who chose not to comply with the law, motorists had to purchase additional

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1 insurance coverage. Motorists who did not purchase liability
2 insurance required by law were nonetheless permitted to make
3 liability claims against motorists who had purchased liability
4 insurance. That system for compensating injured motorists was
5 inefficient and over-compensated persons with non-serious
6 injuries. The costs of compensating injured persons were
7 compounded by extraordinary litigation and claim-processing
8 costs that were ultimately borne by insurance consumers and
9 taxpayers of New Mexico.

10 B. The purposes of the Personal Choice Auto
11 Insurance Act are to:

12 (1) give owners of motor vehicles the option to
13 reduce insurance costs by choosing how they will satisfy the
14 requirements of the Mandatory Financial Responsibility Act.

15 Under the Personal Choice Auto Insurance Act, motorists may
16 choose to:

17 (a) forgo their right to sue for
18 noneconomic and compensated economic damages arising out of a
19 motor vehicle accident except in certain circumstances, by
20 purchasing a personal compensation policy; or

21 (b) retain the right to recover for
22 damages under traditional tort principles by rejecting purchase
23 of a personal compensation policy, as provided in the Personal
24 Choice Auto Insurance Act;

25 (2) require insurers to make certain optional

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1 coverages available at additional cost to motorists who choose
2 to purchase a personal compensation policy;

3 (3) encourage motorists to comply with
4 Mandatory Financial Responsibility Act requirements by limiting
5 uninsured motorists' rights to recover for loss;

6 (4) speed the administration of justice, ease
7 the burden of litigation on New Mexico courts, decrease the
8 expenses associated with litigation and create a system of
9 arbitration of claims for personal compensation benefits; and

10 (5) correct imbalances and abuses in the
11 operation of the motor vehicle accident insurance system,
12 encourage prompt medical treatment and rehabilitation, provide
13 offsets to avoid duplicate recovery and require medical
14 examinations.

15 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
16 Personal Choice Auto Insurance Act:

17 A. "accidental bodily injury" means bodily injury,
18 sickness, disease or death arising out of an accident, where the
19 accident is unintended by the injured person;

20 B. "cause of action for injury" means a claim for
21 accidental bodily injury caused by the negligence or intentional
22 misconduct of another person, including a claim by any person
23 other than the injured person based on such injury, including
24 loss of consortium, companionship or any other derivative claim;

25 C. "dependent" means all individuals related to

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1 another person by blood, affinity or adoption who customarily
2 reside in the same household with the person and receive
3 financial or services support from the person;

4 D. "driving under the influence of intoxicating
5 liquor or drugs" means an individual has been convicted, as
6 defined in Subsection B of Section 66-5-28 NMSA 1978, of
7 violating Subsection A, B, C or D of Section 66-8-102 NMSA 1978;

8 E. "economic loss" means pecuniary loss and monetary
9 expense incurred by or on behalf of an injured person as the
10 result of accidental bodily injury;

11 F. "injured person" means an individual who sustains
12 accidental bodily injury or the personal representative of a
13 deceased individual's estate;

14 G. "insurer" means an insurer or qualified self-
15 insurer providing coverage on motor vehicles pursuant to the
16 provisions of the Personal Choice Auto Insurance Act;

17 H. "intentional misconduct" means conduct whereby
18 bodily injury is intentionally caused by a person who acts or
19 fails to act for the purpose of causing bodily injury, or who
20 knows or reasonably should have known that bodily injury is
21 substantially certain to result. A person does not
22 intentionally cause bodily injury:

23 (1) merely because his act or failure to act is
24 intentional; or

25 (2) if the act or omission causing bodily

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1 injury is for the purpose of averting bodily harm to the person
2 so acting or to another person;

3 I. "loss of income from work" means:

4 (1) if the injured person was employed or self-
5 employed at any time during the year preceding an accident,
6 eighty percent of the average weekly amount the injured person
7 would have earned or could have reasonably expected to earn but
8 for the accidental bodily injury, through employment or self-
9 employment in his usual occupation or profession, reduced by
10 either:

11 (a) eighty percent of the average weekly
12 amount received from substitute employment or self-employment;
13 or

14 (b) the average weekly amount of income
15 the injured person would have earned in available appropriate
16 substitute employment that the person was capable of performing
17 but unreasonably failed to undertake; or

18 (2) if the injured person was unemployed, the
19 amount of unemployment compensation benefits the injured person
20 would have been eligible to receive but for the accidental
21 bodily injury; provided that loss of income from work does not
22 include any loss of income after an injured person's death;

23 J. "medical expenses" means reasonable expenses
24 incurred by or on behalf of an injured person for necessary
25 medical, chiropractic, surgical, radiological, dental,

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1 ambulance, hospital, medical rehabilitation, physical therapy
2 and professional nursing services, and drugs, medically
3 necessary equipment designed primarily for a medical purpose,
4 eyeglasses, hearing aids and prosthetic devices. Compensable
5 medical expenses do not include expenses when accidental bodily
6 injury is first discovered and treated more than one year after
7 the date of the accident, or any expenses incurred more than
8 three years after the date of the accident. "Medical expenses"
9 does not include:

10 (1) any portion of the charge for a room in any
11 hospital, clinic, convalescent or nursing home, extended care
12 facility or any similar facility in excess of the reasonable and
13 customary charge for semi-private accommodations unless
14 otherwise medically necessary;

15 (2) any portion of a charge or fee for any
16 treatments, services, products or procedures that are
17 experimental in nature, for research, not primarily designed to
18 serve a medical purpose or not commonly and customarily
19 recognized throughout the medical profession or, in the case of
20 chiropractic care, not commonly and customarily recognized
21 throughout the chiropractic profession in the United States as
22 appropriate for treatment of accidental bodily injury; or

23 (3) that portion of any charge for services,
24 products or facilities that exceeds the health care provider's
25 reasonable and customary charge for like services, products or

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1 facilities;

2 K. "medical rehabilitation" means medically
3 necessary rehabilitation services designed to reduce the
4 disability and dependence of an injured person and to restore
5 the person, to the extent reasonably possible, to his
6 pre-accident level of physical functioning;

7 L. "motor vehicle" means a self-propelled vehicle of
8 a kind required to be registered under New Mexico law for use on
9 public streets and highways, other than a vehicle with three or
10 fewer load-bearing wheels;

11 M "motor vehicle liability policy" means that term
12 as defined in Section 66-1-4.11 NMSA 1978;

13 N. "non-economic loss" means any loss other than
14 economic loss, including pain, suffering, loss of enjoyment of
15 life, mental anguish, emotional distress and all other
16 non-economic damages;

17 O. "occupying" means to be in, upon or engaged in
18 the immediate act of entering into or alighting from a motor
19 vehicle;

20 P. "operation, maintenance or use" means operation,
21 maintenance or use of a motor vehicle as a motor vehicle,
22 including occupying the vehicle. "Operation, maintenance or
23 use" does not include:

24 (1) conduct in the course of the business of
25 repairing, servicing, washing, selling, maintaining or

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1 manufacturing motor vehicles unless the conduct occurs off the
2 business premises; or

3 (2) conduct in the course of loading or
4 unloading the motor vehicle unless the conduct occurs while
5 engaged in operation, maintenance or use of the vehicle;

6 Q. "pedestrian" means any person not occupying a
7 motor vehicle;

8 R. "personal compensation benefits" means benefits
9 with an aggregate limit of at least fifteen thousand dollars
10 (\$15,000) per person per accident for economic loss resulting
11 from accidental bodily injury, as follows:

12 (1) medical expenses;

13 (2) loss of income from work up to two hundred
14 dollars (\$200) per week for not more than three years from the
15 date of the accident that caused the accidental bodily injury;

16 (3) if the injured person is not receiving
17 benefits for loss of income from work, replacement services loss
18 up to one hundred dollars (\$100) per week for not more than
19 three years from the date of the accident that caused the
20 accidental bodily injury; and

21 (4) a death benefit of fifteen thousand dollars
22 (\$15,000) payable to the dependents or, if none, to the estate
23 of a decedent, if death occurs not more than one year after the
24 date of the accident causing the accidental bodily injury;

25 S. "personal compensation chooser" means a personal

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1 compensation insured or any other person who has not exercised
2 his right under Section 5 of the Personal Choice Auto Insurance
3 Act to reject that act's limitations on tort rights and
4 liabilities, other than an uninsured motorist;

5 T. "personal compensation insured" means:

6 (1) the named insured of a personal
7 compensation policy, and any resident relative, other than a
8 tort chooser;

9 (2) any person, other than a tort chooser, who
10 sustains accidental bodily injury while occupying the motor
11 vehicle described on the declarations page of a personal
12 compensation policy; or

13 (3) with respect to accidents within New
14 Mexico, any pedestrian, other than a tort chooser, who sustains
15 accidental bodily injury by the motor vehicle described on the
16 declarations page of a personal compensation policy;

17 U. "personal compensation policy" means an insurance
18 policy or qualified self-insurance plan that provides personal
19 compensation benefits, property damage liability and compulsory
20 financial responsibility coverage applicable in jurisdictions
21 other than New Mexico in at least the minimum limits required by
22 the Personal Choice Auto Insurance Act;

23 V. "property damage liability" means liability
24 insurance coverage with a limit of at least ten thousand dollars
25 (\$10,000) per accident, exclusive of interest and costs, for

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1 damage to property in any one accident;

2 W. "replacement services loss" means expenses
3 reasonably incurred for ordinary and necessary services from
4 others in lieu of those the injured person would have performed,
5 not for income but for the benefit of the injured person's
6 family, if he had not been injured. "Replacement services loss"
7 does not include expenses for services performed by any person
8 residing in the household of the injured person, services
9 performed by any person related to the injured person or
10 services performed after the injured person's death;

11 X. "resident relative" means an individual related
12 to any named insured of a personal compensation or motor vehicle
13 liability policy by blood, affinity or adoption and who
14 customarily resides in the same household with the named
15 insured. An individual customarily resides in the same
16 household if the individual primarily makes his home in the same
17 family unit, even though temporarily living elsewhere;

18 Y. "superintendent" means the superintendent of
19 insurance;

20 Z. "tort chooser" means any person who has exercised
21 his right under Section 5 of the Personal Choice Auto Insurance
22 Act to reject that act's limitations on tort rights and
23 liabilities;

24 AA. "tort coverage" means coverage under a motor
25 vehicle bodily injury and property damage liability policy in

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1 which a tort chooser involved in an accident with a personal
2 compensation chooser recovers damages from the tort chooser's
3 own insurer for economic and non-economic loss that the tort
4 chooser is barred from recovering from the personal compensation
5 chooser. The coverage limit shall be at least equal to the
6 bodily injury liability limit under the policy; and

7 BB. "uncompensated economic loss" means that portion
8 of economic loss arising out of accidental bodily injury that
9 exceeds the total of benefits provided by applicable personal
10 compensation policies and benefits received from all other
11 sources as reimbursement for or arising from accidental bodily
12 injury, other than life insurance benefits, regardless of the
13 nature or number of benefit sources available or their form.

14 "Uncompensated economic loss" does not include:

15 (1) the amount of economic loss resulting from
16 application of a deductible under a personal compensation
17 policy;

18 (2) the amount of economic loss that would have
19 been covered under a personal compensation policy providing
20 minimum benefits that the injured person or his resident
21 relative was required to maintain by the Personal Choice Auto
22 Insurance Act but failed to maintain in effect; or

23 (3) the first fifteen thousand dollars
24 (\$15,000) of economic loss sustained by a tort chooser,
25 regardless of whether such loss is recovered from any other

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1 source.

2 Section 4. [NEW MATERIAL] MOTOR VEHICLE INSURANCE
3 REQUIREMENTS. --

4 A. Every motor vehicle, other than those listed as
5 exempt in Section 66-5-207 NMSA 1978, shall be covered by a
6 personal compensation policy providing personal compensation
7 benefits, property damage liability and compulsory financial
8 responsibility coverage applicable in jurisdictions other than
9 New Mexico in at least the minimum limits required by the
10 Personal Choice Auto Insurance Act, unless the owner or other
11 person responsible for maintaining coverage is a tort chooser.

12 B. A tort chooser is not eligible for a personal
13 compensation policy, and shall comply with the provisions of the
14 Mandatory Financial Responsibility Act by obtaining a motor
15 vehicle liability policy or providing other evidence of
16 financial responsibility.

17 C. The personal compensation policy required by this
18 section may be provided through insurance or a qualified plan of
19 self-insurance approved by the superintendent. The
20 superintendent may approve a self-insurance plan and issue a
21 certificate of self-insurance if the superintendent is satisfied
22 that the plan is actuarially sound and will continue to have
23 sufficient financial assets to respond to claims.

24 D. The named insured of a personal compensation
25 policy may waive benefits for loss of income from work for an

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1 appropriate rate reduction by completing a certification form
2 prescribed by the superintendent stating under oath that neither
3 the named insured or any resident relative has earned income
4 from regular employment during the past thirty days, and that
5 none of them expects to earn income from regular employment for
6 at least one hundred and eighty days from the date the
7 certification is executed. A properly completed form shall be
8 conclusive proof of the insured's intent to waive loss of income
9 benefits.

10 E. Prior to the inception of a personal compensation
11 policy, the insurer shall offer the named insured the
12 additional, optional insurance coverages specified in Subsection
13 F of this section. The named insured's decision to purchase or
14 not to purchase any such coverages is binding on all insureds
15 under the policy, and applies to all renewals and replacement
16 policies until the named insured requests a change.

17 F. The additional optional insurance coverages
18 required to be made available under a personal compensation
19 policy at additional cost are:

20 (1) personal compensation benefits covering
21 loss in excess of fifteen thousand dollars (\$15,000) per person,
22 in optional increments up to not less than an aggregate limit of
23 one hundred thousand dollars (\$100,000) per person per accident.
24 Except as provided in Subsection D of this section, if the
25 aggregate limit is one hundred thousand dollars (\$100,000) or

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1 more, the sublimit for loss of income from work shall be not
2 less than five hundred dollars (\$500) per week;

3 (2) motor vehicle bodily injury liability
4 insurance with a limit of not less than fifteen thousand dollars
5 (\$15,000) per person per accident, exclusive of interest and
6 costs, due to accidental bodily injury and, subject to the per-
7 person limit, an aggregate limit per accident of not less than
8 thirty thousand dollars (\$30,000), exclusive of interest and
9 costs; and

10 (3) scheduled benefits coverage with limits of
11 at least ten thousand dollars (\$10,000) per person per accident,
12 in optional increments up to not less than one hundred thousand
13 dollars (\$100,000) per person per accident. Scheduled benefits
14 coverage shall provide benefits, payable in addition to and
15 without regard to any other benefits payable, for loss from
16 accidental bodily injury sustained by the named insured of a
17 personal compensation policy and any resident relative who is
18 not a tort chooser while engaged in the operation, maintenance
19 or use of a motor vehicle or as a pedestrian. Scheduled
20 benefits coverage shall be paid as follows, provided that only
21 the largest applicable benefit shall be paid for any person for
22 any one accident:

- 23 (a) loss of life, the principal sum;
24 (b) permanent and total disability, the
25 principal sum;

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- 1 (c) loss of two or more members, the
2 principal sum;
- 3 (d) loss of one member, one-half of the
4 principal sum;
- 5 (e) loss of thumb and index finger on the
6 same hand, one-fourth of the principal sum;
- 7 (f) permanent and total loss of hearing,
8 one-half of the principal sum;
- 9 (g) permanent and total loss of the sense
10 of smell or taste, one-fourth of the principal sum;
- 11 (h) loss of a finger or toe, one-eighth
12 of the principal sum;
- 13 (i) serious permanent disfigurement,
14 one-eighth of the principal sum; and
- 15 (j) permanent and total loss of use of an
16 internal organ, one-eighth of the principal sum.

17 G. As used in Paragraph (3) of Subsection F of this
18 section:

19 (1) "loss" means, with regard to a hand or
20 foot, permanent, complete loss of use of the hand or foot, or
21 actual severance of the hand or foot through or above the wrist
22 or ankle joints; with regard to an eye, complete, irrecoverable
23 loss of sight; with regard to a thumb, permanent, complete loss
24 of use of the thumb or actual severance of the thumb through the
25 proximal phalanx or metacarpal; with regard to the index finger

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1 or any other finger, permanent, complete loss of use of the
2 particular finger or actual severance of the particular finger
3 through the middle or proximal phalanx or metacarpal; and with
4 regard to any toe, actual severance through the proximal phalanx
5 or metacarpal of the particular toe;

6 (2) "member" means hand, foot or eye;

7 (3) "permanent and total disability" means, for
8 persons who have reached the age of majority or who are working
9 full time at the time of the accidental bodily injury, the
10 insured's complete inability after one year of continuous total
11 disability to engage in an occupation or employment for which
12 the insured is fitted by reason of education, training or
13 experience for the remainder of the insured's life. As used in
14 this subparagraph, "continuous total disability" means the
15 insured's complete inability during the first year of disability
16 to perform every duty of the insured's usual occupation. Such
17 inability shall commence within thirty days after the date of
18 the accident. For persons who are both under the age of
19 majority and not working full time at the time of the accidental
20 bodily injury, "permanent and total disability" means for two
21 consecutive years having an abnormal electroencephalography and
22 abnormal brain magnetic resonance image or having seizures for
23 two consecutive years; and

24 (4) "principal sum" means the coverage limit
25 for scheduled benefits coverage.

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H. An insurer may offer:

(1) limits higher than those required by this section;

(2) deductible and coinsurance options for the coverage described in Paragraph (1) of Subsection F of this section;

(3) a limit on the coverage specified in Paragraph (2) of Subsection F of this section on a combined limit basis instead of a split limits basis; and

(4) coverages in addition to those required by this section, including collision and comprehensive physical damage.

I. Any coverages provided pursuant to this section shall be subject to the premium rates, policy forms, terms, limitations, conditions and exclusions approved by the superintendent.

J. The coverages provided pursuant to this section shall be subject to the provisions of Sections 8 and 10 of the Personal Choice Auto Insurance Act.

K. Each insurer shall furnish named insureds with a card constituting evidence of financial responsibility and proof of insurance; provided that the card shall not be deemed to create insurance coverage if the policy has, in fact, lapsed or been canceled on the date of an accident. The card, insurance policy, insurance policy binder, certificate of insurance or

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1 such other proof as may be prescribed by the motor vehicle
2 division of the taxation and revenue department shall constitute
3 sufficient proof of insurance and evidence of financial
4 responsibility for purposes of New Mexico law.

5 Section 5. [NEW MATERIAL] RIGHT OF REJECTION--UNIFORMITY
6 OF CHOICE. --

7 A. Any person, including a person who is not the
8 owner or other person responsible for maintaining coverage on a
9 motor vehicle or a resident relative, may execute a form
10 prescribed by the superintendent rejecting the limitations on
11 tort rights and liabilities of the Personal Choice Auto
12 Insurance Act, and shall file the form with the superintendent,
13 who shall maintain the forms as public records. Rejection is
14 effective with respect to any accident occurring after the date
15 and time the superintendent receives the rejection form.
16 Rejection for a minor or incapacitated person shall be made on
17 his behalf by his parent or guardian and shall remain effective
18 until revoked or until the person is no longer a minor or
19 incapacitated, whichever occurs first. Completion and filing of
20 the form prescribed by the superintendent shall be conclusive
21 proof that the person completing the form made an informed and
22 knowledgeable decision concerning rejection. Rejection remains
23 effective until revoked in writing on a form prescribed by the
24 superintendent.

25 B. Each person so rejecting shall maintain in effect

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1 a policy of motor vehicle liability insurance with at least the
2 minimum coverages, including tort coverage, and limits required
3 by the Personal Choice Auto Insurance Act and the Mandatory
4 Financial Responsibility Act.

5 C. A person who effectively rejects in compliance
6 with Subsections A and B of this section retains all traditional
7 tort rights and tort liabilities to the extent provided in the
8 Personal Choice Auto Insurance Act. No such person is entitled
9 to collect personal compensation benefits under any policy
10 unless he has subsequently revoked the rejection as provided in
11 Subsection D of this section.

12 D. Revocation of rejection shall be made on a form
13 prescribed by the superintendent. Revocation becomes effective
14 as of the date and time the superintendent receives it.
15 Revocation remains effective until superseded by the filing of a
16 rejection form. Regardless of the non-filing of subsequent
17 revocation forms, a person eligible for payment of personal
18 compensation benefits as a named insured under a personal
19 compensation policy shall be deemed to have withdrawn any
20 rejection.

21 E. In order to minimize conflict in choices between
22 personal compensation choosers and tort choosers, insurers are
23 authorized to maintain underwriting rules that require
24 uniformity of choice by the named insured and all resident
25 relatives.

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1 F. The superintendent shall adopt and promulgate
2 regulations governing:

3 (1) rejection and revocation of such rejection
4 pursuant to this section, including situations involving
5 multiple vehicles and multiple policies in the same household;
6 and

7 (2) a system for maintaining and providing
8 access to forms filed pursuant to this section.

9 Section 6. [NEW MATERIAL] CONSUMER INFORMATION PROGRAM --

10 A. The superintendent shall establish and maintain a
11 program to inform consumers about the comparative costs of
12 personal compensation insurance and liability insurance, as well
13 as the benefits, rights and responsibilities under each type of
14 insurance. The program shall include procedures for informing
15 insureds of their right of rejection.

16 B. The superintendent shall prepare a budget
17 reflecting costs associated with carrying out his
18 responsibilities under the Personal Choice Auto Insurance Act.
19 The superintendent's budgeted costs shall be assessed annually
20 to all motor vehicle insurers doing business in New Mexico pro
21 rata on the basis of earned premium reported for the preceding
22 calendar year.

23 C. Any person, after being provided information in a
24 form approved by the superintendent explaining the basis for
25 choosing between being a personal compensation chooser and a

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1 tort chooser, shall be bound to the terms of the status and
2 coverage chosen and is precluded from claiming liability against
3 any other person based on being inadequately informed.

4 Section 7. [NEW MATERIAL] APPLICATION OF PERSONAL
5 COMPENSATION BENEFITS AND COVERAGES TO OTHER JURISDICTIONS. --

6 A. A personal compensation policy shall pay personal
7 compensation benefits for accidental bodily injury of a personal
8 compensation insured sustained within the United States, its
9 territories or possessions or Canada.

10 B. A personal compensation policy shall, if an
11 insured becomes subject to a compulsory financial responsibility
12 or similar law of another jurisdiction of the United States, its
13 territories or possessions or Canada, provide the coverage
14 required by the law of that jurisdiction.

15 Section 8. [NEW MATERIAL] PERSONS NOT ENTITLED TO
16 PERSONAL COMPENSATION BENEFITS--LIMITATIONS ON PERSONAL
17 COMPENSATION BENEFITS. --

18 A. Notwithstanding any other provision of the
19 Personal Choice Auto Insurance Act, an insurer is not obligated
20 to provide personal compensation benefits for any injured person
21 who:

22 (1) was injured in a motor vehicle accident
23 while committing a felony or while voluntarily operating or
24 occupying a vehicle known by him to be stolen;

25 (2) was injured while engaged in the operation,

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1 maintenance or use of, or as a pedestrian by, a motor vehicle
2 owned by, furnished to or available for the regular use of the
3 injured person, or a resident relative of the injured person, if
4 such motor vehicle is not covered by the policy against which a
5 claim is made;

6 (3) was injured as a result of his intentional
7 misconduct. If a person dies as a result of his intentional
8 misconduct, the insurer is not obligated to provide the person's
9 dependents and estate his personal compensation benefits;

10 (4) was an uninsured motorist at the time of
11 the accident causing the injuries. As used in this paragraph,
12 "uninsured motorist" means a person who is the owner of or other
13 person responsible for maintaining coverage on a motor vehicle
14 pursuant to the Personal Choice Auto Insurance Act but who has
15 failed to maintain such coverage;

16 (5) was injured while operating or occupying a
17 motor vehicle involved in an organized race or speed contest; or

18 (6) is a tort chooser.

19 B. There shall be no coverage for the named insured
20 or any resident relative under a personal compensation policy
21 while operating or occupying a self-propelled vehicle with three
22 or fewer load-bearing wheels.

23 C. An insurer shall not be obligated to pay personal
24 compensation benefits, other than medical payments, to or on
25 behalf of any injured person who was driving under the influence

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1 of intoxicating liquor or drugs.

2 D. Nothing in this section bars an insurer from
3 providing personal compensation benefits for any injured person,
4 otherwise excluded by this section, if the policy clearly states
5 that it provides such coverage.

6 Section 9. [NEW MATERIAL] PAYMENT OF PERSONAL
7 COMPENSATION BENEFITS. -- Personal compensation benefits are
8 payable to any of the following:

9 A. the injured person;

10 B. the parent or guardian of the injured person, if
11 the injured person is a minor or incapacitated;

12 C. a dependent or the personal representative of the
13 estate of the injured person; or

14 D. any person providing medical or other health care
15 services, products or facilities for which payment is due.

16 Section 10. [NEW MATERIAL] PRIORITY OF BENEFITS. --

17 A. Personal compensation policies are liable to pay
18 personal compensation benefits in the following order of
19 priority up to their respective coverage limits:

20 (1) the personal compensation policy covering a
21 motor vehicle involved in the accident, if the injured person
22 was engaged in the operation, maintenance or use of the motor
23 vehicle or was a pedestrian injured by the motor vehicle at the
24 time of the accident;

25 (2) any personal compensation policy under

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1 which the injured person is a named insured;

2 (3) any personal compensation policy under
3 which the injured person is a resident relative; and

4 (4) any personal compensation policy under
5 which the injured person qualifies as a personal compensation
6 insured other than as described in Paragraphs (1) through (3) of
7 this subsection.

8 B. Subject to the payment priorities in Subsection A
9 of this section, if a personal compensation insured is entitled
10 to benefits under more than one personal compensation policy or
11 coverage, the maximum recovery shall not exceed the amount
12 payable under the personal compensation policy with the highest
13 limit.

14 C. If two or more insurers are obligated to pay
15 personal compensation benefits at the same priority, the insurer
16 against whom the claim is first made shall pay the claim up to
17 that insurer's policy limits as if wholly responsible and may
18 thereafter recover contribution pro rata on the basis of
19 coverage limits from any other insurer at the same priority
20 level.

21 D. For purposes of payment of personal compensation
22 benefits only, an unoccupied, parked motor vehicle is not a
23 motor vehicle involved in an accident unless it was parked in
24 such a way as to cause unreasonable risk of injury.

25 Section 11. [NEW MATERIAL] COORDINATION OF BENEFITS. -- The

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1 personal compensation insurer has the primary obligation to
2 indemnify its personal compensation insured who sustains
3 accidental bodily injury; provided that personal compensation
4 benefits are excess over and shall not duplicate the amount of
5 benefits an injured person recovers, or is entitled to recover,
6 under a state or federal workers' compensation law or similar
7 occupational injury law, based on the same accidental bodily
8 injury.

9 Section 12. [NEW MATERIAL] LIMITATIONS ON TORT RIGHTS AND
10 LIABILITIES--CLAIMS FOR UNCOMPENSATED ECONOMIC LOSS.--

11 A. Except as provided otherwise in Subsection C of
12 this section:

13 (1) no person, other than a tort chooser, shall
14 have a cause of action in tort or otherwise for accidental
15 bodily injury caused in whole or in part by the operation,
16 maintenance or use of a motor vehicle subject to the Personal
17 Choice Auto Insurance Act, other than for uncompensated economic
18 loss; and

19 (2) a tort chooser shall have no cause of
20 action in tort or otherwise against a personal compensation
21 chooser for accidental bodily injury caused in whole or in part
22 by the operation, maintenance or use of a motor vehicle subject
23 to the Personal Choice Auto Insurance Act, other than for
24 uncompensated economic loss.

25 B. Subject to the provisions of Subsection A of this
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1 section and except as provided otherwise in Subsection C of this
2 section, an uninsured motorist shall not have a cause of action
3 to recover damages resulting from an accident arising out of the
4 operation, maintenance or use of a motor vehicle from a personal
5 compensation chooser or a tort chooser for:

6 (1) the first fifteen thousand dollars
7 (\$15,000) of economic loss resulting from accidental bodily
8 injury; or

9 (2) the first ten thousand dollars (\$10,000) of
10 property damage.

11 As used in this subsection, "uninsured motorist" means a
12 person who is the owner of or other person responsible for
13 maintaining coverage on a motor vehicle subject to the insurance
14 requirements of the Personal Choice Auto Insurance Act, who
15 fails to maintain the minimum required coverages.

16 C. Any person shall have a cause of action under
17 common law tort principles for economic and non-economic loss
18 against any other person who causes accidental bodily injury or
19 motor vehicle property damage while committing a felony or while
20 driving under the influence of intoxicating liquor or drugs. It
21 is against the public policy of this state for an insurer to pay
22 the damages assessed against an insured pursuant to this
23 subsection, except for economic loss.

24 D. Any person shall have a cause of action under
25 common law tort principles for economic and non-economic loss

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1 resulting from accidental bodily injury or property damage
2 caused by intentional misconduct of another person. It is
3 against the public policy of this state for an insurer to pay
4 the damages assessed against an insured pursuant to this
5 subsection.

6 Section 13. [NEW MATERIAL] CLAIMS FOR UNCOMPENSATED
7 ECONOMIC LOSS--SETTLEMENT PERIOD--ATTORNEY FEES. --

8 A. Any claimant seeking recovery for uncompensated
9 economic loss from another person, as authorized by the Personal
10 Choice Auto Insurance Act, shall make demand for settlement in
11 writing, accompanied by supporting documentation and all
12 relevant bills and employer records, to the person or the
13 person's insurer at least thirty days before filing any lawsuit
14 seeking damages against the person. The person against whom
15 claim is made or his insurer shall reply in writing to the
16 demand prior to the last day of the settlement period, or the
17 person shall be deemed to have made no offer. If any applicable
18 statute of limitation would otherwise run during the thirty-day
19 settlement period, that statute of limitation shall be tolled
20 until the end of the second business day after the last day of
21 the settlement period. The thirty-day settlement period shall
22 begin to run on the day the written demand is mailed or
23 otherwise delivered.

24 B. If the claimant is unable to reach an agreement
25 with the person against whom the claim is made or the person's

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1 insurer by the last day of the settlement period, the claimant
2 shall be entitled to file a lawsuit seeking uncompensated
3 economic loss based on common-law tort principles. If the
4 claimant is deemed the prevailing party as provided in this
5 subsection, he shall, in addition to any damages awarded, be
6 awarded reasonable attorney fees, not to exceed one-third of the
7 gross amount of the recovery, exclusive of interest and court
8 costs; provided that if the gross recovery exceeds one hundred
9 thousand dollars (\$100,000), the maximum fee shall be limited to
10 one-third of the amount up to one hundred thousand dollars
11 (\$100,000) plus fifteen percent of the amount in excess of one
12 hundred thousand dollars (\$100,000).

13 The claimant shall be deemed to be the prevailing party if
14 he recovers damages, exclusive of interest and court costs, in
15 an amount equal to or greater than the midpoint between the last
16 demand made during the settlement period by the claimant and the
17 last offer made during the settlement period by the person
18 against whom the claim is made or the person's insurer.

19 C. Nothing in this section shall be deemed to
20 prohibit the parties from compromising a claim at any time by
21 mutual agreement.

22 Section 14. [NEW MATERIAL] RIGHT OF SUBROGATION--
23 CONDITIONS.--An insurer shall be subrogated, to the extent of
24 any personal compensation benefits paid, to all of the rights of
25 its insured with respect to an accident caused, in whole or in

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1 part, by the fault of any person who is not a personal
2 compensation chooser.

3 Section 15. [NEW MATERIAL] PAYMENT OF INSURANCE
4 BENEFITS--CAUSES OF ACTION. --

5 A. No offset shall be allowed against personal
6 compensation benefits due based on the value of a cause of
7 action until after a monetary recovery is made. After recovery
8 is made, a deduction from future benefits may be made in no more
9 than the amount of the net recovery, exclusive of attorney fees,
10 expenses and costs incurred in effecting the recovery.

11 B. If personal compensation benefits have been
12 received, the insurer may require the recipient to repay, out of
13 such recovery, an amount equal to the personal compensation
14 benefits received but not more than the net recovery, exclusive
15 of attorney fees, expenses and costs incurred in effecting the
16 recovery. Any remainder of the net recovery shall be credited
17 periodically against loss as it accrues, until an amount equal
18 to the net recovery has been deducted. The insurer shall have a
19 lien on the recovery equal to net personal compensation benefits
20 received.

21 C. Recovery on a cause of action shall not operate
22 to reduce personal compensation benefit coverage limits, which
23 shall be paid out in full to the extent economic loss exceeds
24 the amount of recovery.

25 Section 16. [NEW MATERIAL] PERSONAL COMPENSATION

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1 BENEFITS-- PROMPT PAYMENT. --

2 A. Personal compensation benefits shall be paid as
3 loss accrues. Loss accrues when medical expense, loss of income
4 from work or replacement services loss occurs or when the
5 injured person dies. Notwithstanding any provision of the
6 Insurance Code, personal compensation benefits for accrued
7 losses are overdue if not paid within thirty days after the
8 insurer receives reasonable proof of the fact and the amount of
9 loss; provided that an insurer may accumulate claims for periods
10 not exceeding thirty days, in which case benefits are not
11 overdue if paid within twenty days after the last day of the
12 period of accumulation. If reasonable proof is not supplied as
13 to the entire claim, the amount that is supported by reasonable
14 proof shall be paid promptly as provided in this subsection, and
15 any part of the remainder of the claim that is later supported
16 by reasonable proof shall be paid promptly in the same manner.

17 B. For the purpose of calculating the extent to
18 which personal compensation benefits are overdue, payment shall
19 be treated as made on the date a draft or other valid instrument
20 is placed in the United States mail in a properly addressed
21 postpaid envelope or, if not mailed, on the date of personal
22 delivery to the insured.

23 C. Notwithstanding any provision of the Insurance
24 Code, if an insurer is found after an administrative hearing by
25 the superintendent or upon review by a court of competent

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1 jurisdiction to be in violation of this section, the exclusive
2 remedy shall be the recovery of the personal compensation
3 benefits and interest at the rate of twelve percent per year
4 beginning from the date the benefits were due, together with
5 attorney fees, expenses and costs. In the event of an insurer's
6 willful or wanton failure to comply with this section, the
7 recovery shall be three times the amount of the personal
8 compensation benefits that are overdue, together with attorney
9 fees, expenses and costs.

10 Section 17. [NEW MATERIAL] ASSIGNMENT OR GARNISHMENT--
11 PERSONAL COMPENSATION BENEFITS EXEMPT. --

12 A. Personal compensation benefits are exempt from
13 garnishment, attachment, execution or any other process or claim
14 to the extent that wages or earnings are exempt under any
15 applicable law.

16 B. An agreement for assignment of any right to
17 personal compensation benefits payable in the future shall be
18 unenforceable except to the extent that:

19 (1) such benefits are for the cost of medical
20 or other health care services, products or facilities provided
21 or to be provided by the assignee; or

22 (2) benefits for loss of income from work or
23 replacement services loss are assigned for payment of alimony,
24 maintenance or child support.

25 Section 18. [NEW MATERIAL] LIMITATIONS OF ACTIONS. --

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1 A. Notwithstanding Section 37-1-3 NMSA 1978 and
2 subject to the arbitration provisions in Section 24 of the
3 Personal Choice Auto Insurance Act, if no personal compensation
4 benefits have been paid, an action therefor may be commenced
5 against the insurer no later than two years after the date of
6 the accident causing the injuries.

7 B. Notwithstanding Section 37-1-3 NMSA 1978 and
8 subject to the arbitration provisions in Section 24 of the
9 Personal Choice Auto Insurance Act, if personal compensation
10 benefits have been paid, an action for recovery of further
11 personal compensation benefits may be commenced no later than
12 two years after the date of the last payment of personal
13 compensation benefits; provided, that no action for personal
14 compensation benefits shall be commenced against an insurer more
15 than four years after the date of the accident.

16 C. The statute of limitations period for personal
17 injury provided in Section 37-1-8 NMSA 1978 shall, for a cause
18 of action for uncompensated economic damages under the Personal
19 Choice Auto Insurance Act, commence on the day after the insured
20 has incurred economic loss in excess of fifteen thousand dollars
21 (\$15,000) or the insured has exhausted his policy limits,
22 whichever is earlier.

23 Section 19. [NEW MATERIAL] MENTAL AND PHYSICAL
24 EXAMINATIONS. --

25 A. If the mental or physical condition of an injured
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1 person is material to any claim that has been or may be made for
2 personal compensation benefits, the injured person, upon request
3 of an insurer, shall submit to reasonable mental or physical
4 examination by a health care provider designated by the insurer
5 at a reasonably convenient time and location, subject to
6 regulations, if any, adopted and promulgated by the
7 superintendent. The cost of any such examination shall be borne
8 by the insurer and shall not be charged against or operate to
9 reduce benefit limits.

10 B. If an insurer has requested in writing that an
11 injured person submit to mental or physical examination pursuant
12 to Subsection A of this section and the person refuses to
13 comply, the insurer may, upon at least thirty days' prior
14 written notice to the insured, suspend all future personal
15 compensation benefits and cease payment of any incurred but
16 unpaid portion of bills for services which such examination is
17 intended to verify as medically necessary, until the injured
18 person complies with the request.

19 Section 20. [NEW MATERIAL] EMPLOYER AND PROVIDER
20 REQUIREMENTS--MEDICAL EXPENSE REVIEW.--

21 A. Upon request of an insurer, an employer shall
22 furnish a statement of the work record and earnings of an
23 injured person who has filed a claim for personal compensation
24 benefits. The statement shall cover the period specified by the
25 insurer and may include the one-year period before, and the

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1 entire period after, the date of the accident.

2 B. To assure that the treatment and expenses are
3 both reasonable and necessary, insurers may review or obtain a
4 review of treatment and expenses prior to, during and after the
5 course of treatment of an injured person.

6 C. Every medical or other health care provider
7 providing, before or after an injury upon which a claim for
8 personal compensation benefits is based, any services, products
9 or facilities in relation to that or any other injury, or in
10 relation to a condition claimed to be connected with that or any
11 other injury, shall, upon request of the insurer against whom
12 the claim has been made, furnish the insurer a written report of
13 the history, condition, treatment and dates and costs of
14 treatment of the injured person. The information shall be
15 provided with a declaration that the services, products or
16 facilities rendered were reasonable and necessary with respect
17 to the injury sustained and shall identify which expenses were
18 incurred as a result of the injury. Each medical or other
19 health care provider shall also produce in a timely manner and
20 permit the inspection and copying of its records regarding
21 history, condition, treatment and the dates and costs thereof.
22 The person providing the declaration required under this section
23 shall attest to it as follows:

24 "I declare that I have read the foregoing and the facts
25 alleged are true, to the best of my knowledge and belief."

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1 The cost of obtaining the information and records required
2 by this subsection shall be borne by the insurer and shall not
3 be charged against or operate to reduce benefit limits.

4 D. No cause of action for violation of the
5 physician-patient privilege or invasion of the right of privacy
6 shall exist against any medical or other health care provider
7 complying with the provisions of this section; provided that the
8 insurer is responsible for assuring the confidentiality of the
9 records in the hands of its officers, employees and agents.

10 E. A dispute regarding the right to the discovery of
11 facts about an injured person by the insurer may be resolved
12 through arbitration as provided in Section 24 of the Personal
13 Choice Auto Insurance Act or court proceedings.

14 Section 21. [NEW MATERIAL] ASSIGNED CLAIMS PLAN. --

15 A. Insurers, other than self-insurance plans,
16 authorized to provide motor vehicle insurance under the Personal
17 Choice Auto Insurance Act shall organize, participate in and
18 maintain an assigned claims plan to provide benefits equivalent
19 to the minimum personal compensation benefits required by that
20 act to any injured person covered by that act; provided that the
21 person is not a tort chooser or a resident relative of an
22 uninsured motorist as defined in Paragraph (4) of Subsection A
23 of Section 8 of that act and further provided that:

24 (1) personal compensation benefits are
25 unavailable, for a reason other than as specified in Section 8

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1 of that act; or

2 (2) personal compensation benefits are
3 unavailable, because of the insolvency of an insurer for whose
4 covered claims the New Mexico property and casualty insurance
5 guaranty association is not responsible.

6 B. The assigned claims plan shall adopt bylaws and
7 rules, and enter into necessary agreements for the operation of
8 the plan and the equitable distribution of costs, as approved by
9 the superintendent.

10 C. Any claim through the assigned claims plan shall
11 be assigned to an insurer in accordance with the plan's bylaws
12 and rules. Upon such assignment, the insurer shall have the
13 rights and obligations it would have had if, prior to such
14 assignment, it had issued a personal compensation policy
15 providing the minimum personal compensation coverage required by
16 law.

17 D. Any person accepting personal compensation
18 benefits under the assigned claims plan shall have the rights
19 and obligations the person would have had under a personal
20 compensation policy issued to him providing the minimum personal
21 compensation coverage required by law.

22 E. Notwithstanding any other provision of the
23 Personal Choice Auto Insurance Act, benefits available through
24 the assigned claims plan shall be reduced to the extent that
25 benefits covering the same loss are available from other

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1 sources, regardless of the nature or number of benefit sources
2 available and regardless of the nature or form of the benefits.
3 The plan coverage shall be deemed secondary to any such other
4 sources.

5 F. The assigned claims plan and the insurer to whom
6 the claim is assigned are subrogated, to the extent of personal
7 compensation benefits paid, to all of the rights of the claimant
8 against any person liable for such loss and against any insurer,
9 its successor in interest or any other person legally obligated
10 to provide personal compensation benefits to the injured person.

11 Section 22. [NEW MATERIAL] INCENTIVES FOR INSUREDS. -- Each
12 insurer shall adopt an actuarially sound program that provides
13 incentives to a personal compensation chooser, in the form of
14 increased benefits, reduced premiums or other methods:

15 A. to purchase motor vehicles equipped with
16 automatic seat and harness belts or air bags; provided that such
17 incentives shall not include a loss of coverage or benefits for
18 failure to use such devices; and

19 B. to have medical expense benefits delivered by a
20 managed care program designated by the insurer; provided that
21 only the actual cost of such benefits to the insurer shall be
22 credited against the policy limits.

23 Section 23. [NEW MATERIAL] REGULATIONS. -- The
24 superintendent may adopt and promulgate regulations necessary to
25 provide for the effective implementation and administration of

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1 the Personal Choice Auto Insurance Act, consistent with its
2 purposes.

3 Section 24. [NEW MATERIAL] ARBITRATION. --

4 A. Notwithstanding any provision of the Uniform
5 Arbitration Act to the contrary, any dispute with respect to
6 personal compensation benefits between an insurer and an injured
7 person, or the dependents or estate of such person, may be
8 submitted to arbitration pursuant to the provisions of this
9 section if the insurer and the person agree. Only the dispute
10 that the parties have agreed to arbitrate may be addressed by
11 the arbitration.

12 B. Upon agreement for arbitration, each party shall
13 select a competent arbitrator, and the two arbitrators so named
14 shall select a third arbitrator. If unable to agree on the
15 third arbitrator within thirty days, either may request a judge
16 of the district court in the county in which the arbitration is
17 pending to select the third arbitrator. The written decision of
18 any two arbitrators shall be binding on each party, subject to
19 the provisions of Subsection D of this section.

20 C. The cost of the arbitrator and any expert witness
21 shall be paid by the party who selected them. The cost of the
22 third arbitrator and other expenses of arbitration shall be
23 shared equally by both parties.

24 D. The arbitration shall take place in the county in
25 which the insured resides unless the parties agree to another

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1 location. The Rules of Civil Procedure and Rules of Evidence
2 for the District Courts shall apply. Any final decision of the
3 arbitrators shall be subject to judicial review if filed in the
4 district court for the county in which the arbitration took
5 place within thirty days of the date of the arbitrators'
6 decision.

7 Section 25. [NEW MATERIAL] OUT-OF-STATE VEHICLES. -

8 A. Each insurer in New Mexico shall file with the
9 superintendent, as a condition of its continued transaction of
10 business, a form approved by the superintendent declaring that
11 any contract of primary motor vehicle insurance, wherever
12 issued, covering the operation, maintenance or use of a motor
13 vehicle shall be deemed, while the motor vehicle is in New
14 Mexico, to provide at least the minimum benefits required for a
15 personal compensation policy by the Personal Choice Auto
16 Insurance Act. The insured under any such policy or under any
17 policy that states that it meets the requirements of the
18 Mandatory Financial Responsibility Act, shall be deemed to have
19 elected coverage under a personal compensation policy, and to
20 have accepted the limitations on tort rights and liabilities of
21 the Personal Choice Auto Insurance Act.

22 B. The provisions of this section do not apply to
23 any insured who, prior to a motor vehicle accident within New
24 Mexico, has become a tort chooser pursuant to Section 5 of the
25 Personal Choice Auto Insurance Act. With respect to such a tort

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1 chooser, the bodily injury and property damage liability limits
2 of any such policy shall be operative, subject to conformance
3 with the Mandatory Financial Responsibility Act.

4 Section 26. Section 59A-7-7 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 113) is amended to read:

6 "59A-7-7. "VEHICLE" INSURANCE DEFINED. -- "Vehicle"
7 insurance is insurance covering:

8 A. physical damage. Insurance against loss of or
9 damage to any land vehicle or aircraft or any draft or riding
10 animal resulting from or incident to ownership, maintenance or
11 use of any such vehicle, aircraft or animal;

12 B. public liability and property damage. Insurance
13 against any hazard or cause, and against any loss, liability or
14 expense resulting from or incident to ownership, maintenance or
15 use of any such vehicle, aircraft or animal;

16 C. cargo. Insurance against loss of or damage to
17 property contained in a vehicle or being loaded or unloaded
18 therein or therefrom or incident to the ownership, maintenance
19 or use of any such vehicle, aircraft or animal; [and]

20 D. medical payments. Insurance for payment on
21 behalf of the injured party or for reimbursement of the insured
22 for payment, irrespective of legal liability of the insured, of
23 medical, hospital, surgical and disability benefits, to persons
24 injured and funeral and death benefits to dependents,
25 beneficiaries or personal representatives of persons killed as

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1 the result of an accident, resulting from or incident to
2 ownership, maintenance or use of any such vehicle, aircraft or
3 animal. Such coverage shall not be deemed to be "health"
4 insurance for purposes of the Insurance Code; and

5 E. personal compensation. Insurance with benefits
6 as described in the Personal Choice Auto Insurance Act.
7 Personal compensation insurance shall not be deemed health
8 insurance. "

9 Section 27. Section 59A-32-3 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 521) is amended to read:

11 "59A-32-3. PURPOSE OF ASSIGNED RISK PLAN. -- The purpose of
12 the assigned risk plan is to provide for the equitable
13 distribution and apportionment, among insurers authorized to
14 transact in this state the business of [~~automobile and~~] motor
15 vehicle bodily injury, personal compensation, property damage
16 liability and physical damage insurance, of insurance afforded
17 applicants who are in good faith entitled to, but who are unable
18 to procure, such insurance through ordinary methods. "

19 Section 28. Section 59A-32-5 NMSA 1978 (being Laws 1984,
20 Chapter 127, Section 523) is amended to read:

21 "59A-32-5. REQUIREMENTS OF ASSIGNED RISK PLANS. -- Any such
22 agreement or plan for the assignment of risks involving
23 [~~automobile and~~] motor vehicle bodily injury, personal
24 compensation, [~~and~~] property damage liability and physical
25 damage insurance shall include provision for:

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1 A. reasonable rules governing the equitable
2 distribution of risks by direct insurance, reinsurance or
3 otherwise, and by the assignment of risks to insurers
4 participating in the plan;

5 B. rates and reasonable rate modifications, which
6 shall be applicable to such risks and which shall not be
7 excessive, inadequate or unfairly discriminatory;

8 C. the coverage limits [~~of liability which~~] that any
9 insurer to [~~whom~~] which a risk is assigned shall be required to
10 assume; and

11 D. a method whereby applicants for insurance,
12 persons insured and insurers under the plan may have a hearing
13 on grievances and the right to appeal from the decision on any
14 such grievance to the superintendent. "

15 Section 29. Section 59A-32-6 NMSA 1978 (being Laws 1984,
16 Chapter 127, Section 524) is amended to read:

17 "59A-32-6. REVIEW OF PROPOSED ASSIGNED RISK PLANS. -- Every
18 such plan for the assignment of risks involving [~~automobile and~~]
19 motor vehicle bodily injury, personal compensation, [~~and~~]
20 property damage liability and physical damage insurance shall be
21 filed in writing with the superintendent. The superintendent
22 shall review the plan as soon as reasonably possible after
23 filing, to determine whether or not it meets the requirements of
24 Section [~~523 of this article~~] 59A-32-5 NMSA 1978. Each plan
25 shall be on file with the superintendent for a waiting period of

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1 thirty [~~(30)~~] days before it becomes effective, unless sooner
2 approved in writing. Unless disapproved in writing by the
3 superintendent within the thirty [~~(30)~~] day waiting period, a
4 plan shall be deemed approved and shall become effective upon
5 the expiration of that period."

6 Section 30. Section 59A-32-8 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 526) is amended to read:

8 "59A-32-8. FAILURE TO FILE PLAN--ASSIGNED RISK PLAN
9 PRESCRIBED.--If no plan [~~which~~] that meets the requirements of
10 Section [~~523 of this article above~~] 59A-32-5 NMSA 1978 has been
11 filed with the superintendent within ninety [~~(90)~~] days after
12 [~~June 30, 1959~~] the effective date of the Personal Choice Auto
13 Insurance Act, or within the period stated in any order [~~which~~]
14 that disapproves an existing plan, the superintendent may
15 formulate and prescribe a plan [~~which~~] that does meet such
16 requirements, after hearing or consultation with insurers
17 authorized to transact in this state the business of [~~automobile~~
18 ~~and~~] motor vehicle bodily injury, personal compensation, [~~and~~]
19 property damage liability and physical damage insurance. When
20 any plan or [~~plans or~~] amendment thereto has [~~or have~~] been
21 approved or prescribed, no insurer to which [~~such~~] the plan is
22 applicable shall thereafter issue any policy of such insurance,
23 or undertake to transact such business in this state, unless the
24 insurer participates in [~~such~~] the plan."

25 Section 31. Section 66-1-4.3 NMSA 1978 (being Laws 1990,

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1 Chapter 120, Section 4) is amended to read:

2 "66-1-4.3. DEFINITIONS. --As used in the Motor Vehicle
3 Code:

4 A. "camping body" means a vehicle body primarily
5 designed or converted for use as temporary living quarters for
6 recreational, camping or travel activities;

7 B. "camping trailer" means a camping body that
8 exceeds neither eight feet in width nor forty feet in length,
9 mounted on a chassis, or frame with wheels, designed to be drawn
10 by another vehicle and that has collapsible partial side walls
11 that fold for towing and unfold at the campsite;

12 C. "cancellation" means that a driver's license is
13 annulled and terminated because of some error or defect or
14 because the licensee is no longer entitled to the license, but
15 cancellation of a license is without prejudice, and application
16 for a new license may be made at any time after cancellation;

17 D. "casual sale" means the sale of a motor vehicle
18 by the registered owner of the vehicle if the owner has not sold
19 more than four vehicles in that calendar year;

20 ~~[E. "certified motor vehicle liability policy" means~~
21 ~~an owner's policy or a driver's policy of liability insurance to~~
22 ~~or for the benefit of the person named therein as insured,~~
23 ~~certified as provided in the Motor Vehicle Code and meeting the~~
24 ~~requirements of the Motor Vehicle Code as evidence of financial~~
25 ~~responsibility and issued by an insurance carrier duly~~

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1 ~~authorized to transact business in New Mexico;~~

2 ~~F.-] E.~~ "chassis" means the complete motor vehicle,
3 including standard factory equipment, exclusive of the body and
4 cab;

5 ~~G.-] E.~~ "collector" means a person who is the owner
6 of one or more vehicles of historic or special interest who
7 collects, purchases, acquires, trades or disposes of these
8 vehicles or parts thereof for the person's own use in order to
9 preserve, restore and maintain a similar vehicle for hobby
10 purposes;

11 ~~H.-] G.~~ "combination" means any connected assemblage
12 of a motor vehicle and one or more semitrailers, trailers or
13 semitrailers converted to trailers by means of a converter gear;

14 ~~I.-] H.~~ "combination gross vehicle weight" means the
15 sum total of the gross vehicle weights of all units of a
16 combination;

17 ~~J.-] I.~~ "commerce" means the transportation of
18 persons, property or merchandise for hire, compensation, profit
19 or in the furtherance of a commercial enterprise in this state
20 or between New Mexico and a place outside New Mexico, including
21 a place outside the United States;

22 ~~K.-] J.~~ "commercial motor vehicle" means a motor
23 vehicle used in commerce:

24 (1) if the vehicle has a declared gross vehicle
25 weight rating of twenty-six thousand one or more pounds;

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1 (2) if the vehicle is designed to transport
2 sixteen or more passengers, including the driver; or

3 (3) if the vehicle is transporting hazardous
4 materials and is required to be placarded pursuant to applicable
5 law;

6 [~~L.~~] K. "controlled-access highway" means every
7 highway, street or roadway in respect to which owners or
8 occupants of abutting lands and other persons have no legal
9 right of access to or from the highway, street or roadway except
10 at those points only and in the manner as may be determined by
11 the public authority having jurisdiction over the highway,
12 street or roadway;

13 [~~M.~~] L. "controlled substance" means any substance
14 defined in Section 30-31-2 NMSA 1978 as a controlled substance;

15 [~~N.~~] M. "converter gear" means any assemblage of one
16 or more axles with a fifth wheel mounted thereon, designed for
17 use in a combination to support the front end of a semitrailer
18 but not permanently attached thereto. A converter gear shall
19 not be considered a vehicle, as that term is defined in Section
20 66-1-4.19 NMSA 1978, but weight attributable thereto shall be
21 included in declared gross weight;

22 [~~O.~~] N. "conviction" means the alleged violator has
23 entered a plea of guilty or nolo contendere or has been found
24 guilty in the trial court and has waived or exhausted all rights
25 to an appeal;

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[bracketed material] = delete

1 [P-] Q. "crosswalk" means:

2 (1) that part of a roadway at an intersection
3 included within the connections of the lateral lines of the
4 sidewalks on opposite sides of the highway measured from the
5 curbs or, in the absence of curbs, from the edges of the
6 traversable roadway; and

7 (2) any portion of a roadway at an intersection
8 or elsewhere distinctly indicated for pedestrian crossing by
9 lines or other markings on the surface; and

10 [Q-] P. "curb cut" means a short ramp through a curb
11 or built up to the curb."

12 Section 32. Section 66-1-4.6 NMSA 1978 (being Laws 1990,
13 Chapter 120, Section 7) is amended to read:

14 "66-1-4.6. DEFINITIONS. --As used in the Motor Vehicle
15 Code:

16 A. "farm tractor" means every motor vehicle designed
17 and used primarily as a farm implement for drawing plows, mowing
18 machines and other implements of husbandry;

19 B. "financial responsibility" means the ability to
20 respond in damages for liability resulting from traffic
21 accidents arising out of the ownership, maintenance or use of a
22 motor vehicle of a type subject to registration under the laws
23 of New Mexico, in [the] amounts not less than [that] those
24 specified in the Mandatory Financial Responsibility Act, [The
25 term] or having in effect personal compensation and property

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1 damage liability coverages meeting at least the minimum
2 requirements of the Personal Choice Auto Insurance Act.
3 "Financial responsibility" includes a motor vehicle liability
4 policy, [~~a certified motor vehicle liability~~] a personal
5 compensation policy, a surety bond or evidence of a sufficient
6 cash deposit with the state treasurer;

7 C. "first offender" means a person who for the first
8 time under state or federal law or municipal ordinance has been
9 adjudicated guilty of the charge of driving a motor vehicle
10 while under the influence of intoxicating liquor or any other
11 drug that renders the person incapable of safely driving a motor
12 vehicle, regardless of whether the person's sentence was
13 suspended or deferred;

14 D. "flammable liquid" means any liquid that has a
15 flash point of seventy degrees Fahrenheit or less, as determined
16 by a tangible or equivalent closed-cup test device;

17 E. "foreign jurisdiction" means any jurisdiction
18 other than a state of the United States or the District of
19 Columbia;

20 F. "foreign vehicle" means every vehicle of a type
21 required to be registered under the provisions of the Motor
22 Vehicle Code brought into this state from another state,
23 territory or country; and

24 G. "freight trailer" means any trailer, semitrailer
25 or pole trailer drawn by a truck tractor or road tractor, and

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1 any trailer, semitrailer or pole trailer drawn by a truck that
2 has a gross vehicle weight of more than twenty-six thousand
3 pounds, but ~~[the term]~~ "freight trailer" does not include
4 manufactured homes, trailers of less than one-ton carrying
5 capacity used to transport animals or fertilizer trailers of
6 less than three thousand five hundred pounds empty weight. "

7 Section 33. Section 66-1-4.11 NMSA 1978 (being Laws 1990,
8 Chapter 120, Section 12) is amended to read:

9 "66-1-4.11. DEFINITIONS. --As used in the Motor Vehicle
10 Code:

11 A. "mail" means any item properly addressed with
12 postage prepaid delivered by the United States postal service or
13 any other public or private enterprise primarily engaged in the
14 transport and delivery of letters, packages and other parcels;

15 B. "manufactured home" means a moveable or portable
16 housing structure that exceeds either a width of eight feet or a
17 length of forty feet, constructed to be towed on its own chassis
18 and designed to be installed with or without a permanent
19 foundation for human occupancy;

20 C. "manufacturer" means every person engaged in the
21 business of constructing or assembling vehicles of a type
22 required to be registered under the Motor Vehicle Code;

23 D. "manufacturer's certificate of origin" means a
24 certification, on a form supplied by or approved by the
25 division, signed by the manufacturer that the new vehicle

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1 described therein has been transferred to the New Mexico dealer
2 or distributor named therein or to a dealer duly licensed or
3 recognized as such in another state, territory or possession of
4 the United States and that such transfer is the first transfer
5 of the vehicle in ordinary trade and commerce; every such
6 certificate shall contain space for proper reassignment to a New
7 Mexico dealer or to a dealer duly licensed or recognized as such
8 in another state, territory or possession of the United States,
9 and the certificate shall contain a description of the vehicle,
10 the number of cylinders, type of body, engine number and the
11 serial number or other standard identification number provided
12 by the manufacturer of the vehicle;

13 E. "metal tire" means every tire of which the
14 surface in contact with the highway is wholly or partly of metal
15 or other hard nonresilient material, except that a snow tire
16 with metal studs designed to increase traction on ice or snow is
17 not considered a metal tire;

18 F. "moped" means a two-wheeled or three-wheeled
19 vehicle with an automatic transmission and a motor having a
20 piston displacement of less than fifty cubic centimeters that is
21 capable of propelling the vehicle at a maximum speed of not more
22 than thirty miles an hour on level ground, at sea level;

23 G. "motorcycle" means every motor vehicle having a
24 seat or saddle for the use of the rider and designed to travel
25 on not more than three wheels in contact with the ground,

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[bracketed material] = delete

1 excluding a tractor;

2 H. "motor home" means a camping body built on a
3 self-propelled motor vehicle chassis so designed that seating
4 for driver and passengers is within the body itself;

5 I. "motor vehicle" means every vehicle that is self-
6 propelled and every vehicle that is propelled by electric power
7 obtained from batteries or from overhead trolley wires, but not
8 operated upon rails; but for the purposes of the Mandatory
9 Financial Responsibility Act, "motor vehicle" does not include
10 "special mobile equipment"; and

11 J. "motor vehicle liability policy" means an owner's
12 policy or a driver's policy of liability insurance providing
13 limits of coverage not less than the dollar amounts set forth in
14 the Mandatory Financial Responsibility Act as evidence of
15 financial responsibility and, with respect to motor vehicles
16 registered in New Mexico, tort coverage as specified in the
17 Personal Choice Auto Insurance Act, with a coverage limit at
18 least equal to the bodily injury liability limit, issued by an
19 insurance carrier duly authorized to transact business in New
20 Mexico. "

21 Section 34. Section 66-1-4.14 NMSA 1978 (being Laws 1990,
22 Chapter 120, Section 15, as amended) is amended to read:

23 "66-1-4.14. DEFINITIONS. --As used in the Motor Vehicle
24 Code:

25 A. "park" or "parking" means the standing of a

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1 vehicle, whether occupied or not, other than temporarily for the
2 purpose of and while actually engaged in loading and unloading;

3 B. "parking lot" means a parking area containing
4 fifteen or more parking spaces provided for the free use of
5 patrons of any office of state or local government or of any
6 public accommodation, retail or commercial establishment;

7 C. "parts car" means a motor vehicle generally in
8 nonoperable condition that is owned by a collector to furnish
9 parts that are usually nonobtainable from normal sources, thus
10 enabling a collector to preserve, restore and maintain a motor
11 vehicle of historic or special interest;

12 D. "pedestrian" means any natural person on foot;

13 E. "person" means every natural person, firm,
14 copartnership, association, corporation or other legal entity;

15 F. "personal compensation policy" means an owner's
16 or driver's personal compensation policy as specified in the
17 Personal Choice Auto Insurance Act;

18 [~~F-~~] G. "personal information" means information
19 that identifies an individual, including an individual's
20 photograph, social security number, driver identification
21 number, name, address other than zip code, telephone number and
22 medical or disability information, but "personal information"
23 does not include information on vehicles, vehicle ownership,
24 vehicular accidents, driving violations or driver status;

25 [~~G-~~] H. "pneumatic tire" means every tire in which

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[bracketed material] = delete

1 compressed air is designed to support the load;

2 [H-] I. "pole trailer" means any vehicle without
3 motive power, designed to be drawn by another vehicle and
4 attached to the towing vehicle by means of a reach or pole or by
5 being boomed or otherwise secured to the towing vehicle and
6 ordinarily used for transporting long or irregularly shaped
7 loads such as poles, structures, pipes and structural members
8 capable, generally, of sustaining themselves as beams between
9 the supporting connections;

10 [H-] J. "police or peace officer" means every
11 officer authorized to direct or regulate traffic or to make
12 arrests for violations of the Motor Vehicle Code;

13 [J-] K. "private road or driveway" means every way
14 or place in private ownership used for vehicular travel by the
15 owner and those having express or implied permission from the
16 owner, but not other persons; and

17 [K-] L. "property owner" means the owner of a piece
18 of land or the agent of that property owner."

19 Section 35. Section 66-5-201.1 NMSA 1978 (being Laws 1983,
20 Chapter 318, Section 2) is amended to read:

21 "66-5-201.1. PURPOSE. --The legislature is aware that motor
22 vehicle accidents in [~~the state of~~] New Mexico can result in
23 catastrophic financial hardship. The purpose of the Mandatory
24 Financial Responsibility Act is to require and encourage
25 residents of [~~the state of~~] New Mexico who own and operate motor

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[bracketed material] = delete

1 vehicles upon the highways of the state to have the ability
2 either to respond in damages to accidents arising out of the use
3 and operation of a motor vehicle [~~It is the intent that the~~
4 ~~risks and financial burdens of motor vehicle accidents be~~
5 ~~equitably distributed among all owners and operators of motor~~
6 ~~vehicles within the state]~~ or to obtain a personal compensation
7 policy as specified in the Personal Choice Auto Insurance Act."

8 Section 36. Section 66-5-205 NMSA 1978 (being Laws 1983,
9 Chapter 318, Section 6, as amended) is amended to read:

10 "66-5-205. VEHICLE MUST BE INSURED OR OWNER MUST HAVE
11 EVIDENCE OF FINANCIAL RESPONSIBILITY [~~PENALTIES~~].--

12 A. No owner shall permit the operation of an
13 uninsured motor vehicle, or a motor vehicle for which evidence
14 of financial responsibility as was affirmed to the division is
15 not currently valid, upon the streets or highways of New Mexico
16 unless the vehicle is specifically exempted from the provisions
17 of the Mandatory Financial Responsibility Act.

18 B. No person shall drive an uninsured motor vehicle,
19 or a motor vehicle for which evidence of financial
20 responsibility as was affirmed to the division is not currently
21 valid, upon the streets or highways of New Mexico unless he is
22 specifically exempted from the provisions of the Mandatory
23 Financial Responsibility Act.

24 C. For the purposes of the Mandatory Financial
25 Responsibility Act, "uninsured motor vehicle" means a motor

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[bracketed material] = delete

1 vehicle for which a motor vehicle liability policy or a
2 [~~certified motor vehicle liability~~] personal compensation policy
3 meeting the requirements of the laws of New Mexico and of the
4 director is not in effect.

5 D. The provisions of the Mandatory Financial
6 Responsibility Act requiring the deposit of evidence of
7 financial responsibility as provided in Section 66-5-218 NMSA
8 1978, subject to certain exemptions, may apply with respect to
9 persons who have been convicted of or forfeited bail for certain
10 offenses under motor vehicle laws or who have failed to pay
11 judgments or written settlement agreements upon causes of action
12 arising out of ownership, maintenance or use of vehicles of a
13 type subject to registration under the laws of New Mexico.

14 [~~E. Any person who violates the provisions of this~~
15 ~~section is guilty of a misdemeanor and upon conviction shall be~~
16 ~~sentenced to a fine not to exceed three hundred dollars~~
17 ~~(\$300).]~~

18 Section 37. Section 66-5-205.1 NMSA 1978 (being Laws 1989,
19 Chapter 214, Section 1) is amended to read:

20 "66-5-205. 1. [~~UNINSURED MOTORIST CITATION-- REQUIREMENTS TO~~
21 ~~BE FOLLOWED AT TIME OF ACCIDENT-- SUBSEQUENT PROCEDURES] NOTICE
22 OF POLICY TERMINATION OR CANCELLATION. --~~

23 [~~A. When a law enforcement officer issues a driver~~
24 ~~who is involved in an accident a citation for failure to comply~~
25 ~~with the provisions of the Mandatory Financial Responsibility~~

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[bracketed material] = delete

1 ~~Act, the law enforcement officer shall personally at the same~~
2 ~~time:~~

3 ~~(1) issue to the driver cited a temporary~~
4 ~~operation sticker, valid for thirty days after the date the~~
5 ~~sticker is issued, and forward by mail or delivery to the~~
6 ~~division a duplicate of the issued sticker; and~~

7 ~~(2) remove the license plate from the vehicle~~
8 ~~and send it with the duplicate of the sticker to the division~~
9 ~~or, if it cannot be removed, permanently deface the plate.~~

10 ~~B. The division shall return or replace, in its~~
11 ~~discretion, a license plate removed under the provisions of~~
12 ~~Paragraph (2) of Subsection A of this section or replace a~~
13 ~~license plate defaced under that paragraph when the person cited~~
14 ~~for failure to comply with the provisions of the Mandatory~~
15 ~~Financial Responsibility Act furnishes proof of compliance to~~
16 ~~the division and pays to the division a reinstatement fee of~~
17 ~~twenty five dollars (\$25.00). If a person to whom the temporary~~
18 ~~operation sticker is issued furnishes to the division within~~
19 ~~fifteen days after the issuance of the sticker evidence of~~
20 ~~financial responsibility in compliance with the Mandatory~~
21 ~~Financial Responsibility Act and in effect on the date and at~~
22 ~~the time of the issuance of the sticker, the division shall~~
23 ~~replace or return the license plate and waive the twenty five~~
24 ~~dollar (\$25.00) reinstatement fee.~~

25 ~~C. The director shall adopt and promulgate~~

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[bracketed material] = delete

1 ~~regulations prescribing the form and use of the sticker required~~
2 ~~to be issued under Subsection A of this section.~~

3 D.] The director may adopt and promulgate
4 regulations requiring insurance carriers who terminate or cancel
5 any motor vehicle liability policy or [~~certified motor vehicle~~
6 ~~liability~~] personal compensation policy to report monthly each
7 cancellation or termination to the division. Information
8 pertaining to each motor vehicle shall be made a part of that
9 vehicle file for one year. Notification of termination or
10 cancellation made under such a regulation is not grounds for
11 revocation of the motor vehicle registration. "

12 Section 38. Section 66-5-206 NMSA 1978 (being Laws 1983,
13 Chapter 318, Section 7) is amended to read:

14 "66-5-206. REGISTRATION WITHOUT INSURANCE OR EVIDENCE OF
15 FINANCIAL RESPONSIBILITY PROHIBITED--SUSPENSION REQUIRED. --

16 A. The division shall not issue or renew the
17 registration for any motor vehicle not covered by a motor
18 vehicle liability policy, [~~or~~] a [~~certified motor vehicle~~
19 ~~liability~~] personal compensation policy or [~~by~~] evidence of
20 financial responsibility currently valid meeting the
21 requirements of the laws of New Mexico and of the director,
22 unless specifically exempted from the Mandatory Financial
23 Responsibility Act.

24 B. Upon a showing by its records or other sufficient
25 evidence that the required insurance or evidence of financial

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[bracketed material] = delete

1 responsibility has not been provided or maintained for a motor
2 vehicle, the division shall suspend its registration of the
3 motor vehicle. "

4 Section 39. Section 66-5-207 NMSA 1978 (being Laws 1983,
5 Chapter 318, Section 8, as amended) is amended to read:

6 "66-5-207. EXEMPT MOTOR VEHICLES. --The following motor
7 vehicles are exempt from the Mandatory Financial Responsibility
8 Act:

9 A. a motor vehicle owned by the United States
10 government, any state or any political subdivision of a state;

11 B. an implement of husbandry or special mobile
12 equipment [~~which~~] that is only incidentally operated on a
13 highway;

14 C. a motor vehicle operated upon a highway only for
15 the purpose of crossing such highway from one property to
16 another;

17 D. a commercial motor vehicle registered or
18 proportionally registered in this and any other jurisdiction,
19 provided such motor vehicle is covered by a motor vehicle
20 liability policy, [~~or certified motor vehicle liability~~]
21 personal compensation policy or equivalent coverage or other
22 form of financial responsibility in compliance with the laws of
23 any other jurisdiction in which it is registered;

24 E. a motor vehicle approved as self-insured by the
25 superintendent of insurance pursuant to Section 66-5-207.1 NMSA

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1 1978; and

2 F. any motor vehicle when the owner has submitted to
3 the division a signed statement, in such form as may be
4 prescribed by the division, declaring that the vehicle will not
5 be operated on the highways of New Mexico and explaining the
6 reasons therefor. "

7 Section 40. Section 66-5-208 NMSA 1978 (being Laws 1978,
8 Chapter 35, Section 282, as amended) is amended to read:

9 "66-5-208. EVIDENCE OF FINANCIAL RESPONSIBILITY--AMOUNTS
10 AND CONDITIONS.--"Evidence of financial responsibility", as used
11 in the Mandatory Financial Responsibility Act, means:

12 A. evidence of the ability to respond in damages for
13 liability, on account of accidents occurring subsequent to the
14 effective date of the evidence, arising out of the ownership,
15 maintenance or use of a vehicle of a type subject to
16 registration under the laws of New Mexico, in the following
17 amounts:

18 [~~A. twenty-five thousand dollars (\$25,000)]~~
19 (1) fifteen thousand dollars (\$15,000) because
20 of bodily injury to or death of one person in any one accident;

21 [~~B.~~] (2) subject to [~~this~~] the limit for one
22 person, [~~fifty thousand dollars (\$50,000)]~~ thirty thousand
23 dollars (\$30,000) because of bodily injury to or death of two or
24 more persons in any one accident;

25 [~~C.~~] (3) ten thousand dollars (\$10,000) because

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[bracketed material] = delete

1 of injury to or destruction of property of others in any one
2 accident; and

3 [~~D-~~] (4) if evidence is in the form of a surety
4 bond or a cash deposit, the total amount shall be [~~sixty~~
5 ~~thousand dollars (\$60,000)~~] forty thousand dollars (\$40,000); or

6 B. evidence of a valid personal compensation policy
7 as specified in the Personal Choice Auto Insurance Act."

8 Section 41. Section 66-5-209 NMSA 1978 (being Laws 1978,
9 Chapter 35, Section 283, as amended) is amended to read:

10 "66-5-209. MEANING OF "JUDGMENT".--"Judgment", as used in
11 the Mandatory Financial Responsibility Act, means any judgment
12 [~~which~~] that becomes final by expiration without appeal of the
13 time within which an appeal might have been perfected or by
14 final affirmation on appeal rendered by a court of competent
15 jurisdiction of any state or of the United States, upon a cause
16 of action arising out of the ownership, maintenance or use of
17 any motor vehicle of a type subject to registration under the
18 laws of New Mexico, for damages, including damages for care and
19 loss of services, because of bodily injury to or death of any
20 person or for damages because of injury to or destruction of
21 property, including the loss of use thereof, or upon a cause of
22 action on an agreement of settlement for such damages.

23 "Judgment" does not include any amount recoverable as
24 uncompensated economic loss under the Personal Choice Auto
25 Insurance Act."

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[bracketed material] = delete

1 Section 42. Section 66-5-215 NMSA 1978 (being Laws 1978,
2 Chapter 35, Section 298, as amended) is amended to read:

3 "66-5-215. PAYMENTS SUFFICIENT TO SATISFY REQUIREMENTS. --

4 A. Judgments herein referred to shall, for the
5 purpose of the Mandatory Financial Responsibility Act only, be
6 deemed satisfied when:

7 (1) [~~twenty-five thousand dollars (\$25,000)]~~
8 fifteen thousand dollars (\$15,000) has been credited upon any
9 judgment [~~or judgments~~] rendered in excess of that amount
10 because of bodily injury to or death of one person as the result
11 of any one accident;

12 (2) subject to the limit [~~of twenty-five~~
13 ~~thousand dollars (\$25,000) because of bodily injury to or death~~
14 ~~of]~~ for one person, the sum of [fifty thousand dollars
15 ~~(\$50,000)] thirty thousand dollars (\$30,000) has been credited
16 upon any judgment [~~or judgments~~] rendered in excess of that
17 amount because of bodily injury to or death of two or more
18 persons as the result of any one accident; or~~

19 (3) ten thousand dollars (\$10,000) has been
20 credited upon any judgment [~~or judgments~~] rendered in excess of
21 that amount because of injury to or destruction of property of
22 others as a result of any one accident.

23 B. However, payments made in settlements of any
24 claims because of bodily injury, death or property damage
25 arising from the accident shall be credited in reduction of the

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[bracketed material] = delete

1 amounts provided for in this section. "

2 Section 43. Section 66-5-218 NMSA 1978 (being Laws 1978,
3 Chapter 35, Section 302, as amended) is amended to read:

4 "66-5-218. ALTERNATE METHODS OF GIVING EVIDENCE. -- Evidence
5 of financial responsibility, when required under the Mandatory
6 Financial Responsibility Act, may be given by filing:

7 A. evidence of a motor vehicle liability policy;

8 B. evidence of a [~~certified motor vehicle liability~~]
9 personal compensation policy [~~as provided in Section 66-5-219~~
10 ~~NMSA 1978~~];

11 C. a surety bond as provided in Section 66-5-225
12 NMSA 1978; or

13 D. a certificate of deposit of money as provided in
14 Section 66-5-226 NMSA 1978. "

15 Section 44. Section 66-5-220 NMSA 1978 (being Laws 1955,
16 Chapter 182, Section 323, as amended) is amended to read:

17 "66-5-220. DEFAULT BY NONRESIDENT INSURER. -- If any
18 insurance carrier not authorized to transact business in New
19 Mexico [~~which~~] that has qualified to furnish evidence of
20 financial responsibility defaults in any undertakings or
21 agreements, the division shall not thereafter accept [~~as~~]
22 evidence [~~any certificate~~] of financial responsibility of that
23 carrier, whether previously filed or thereafter tendered as
24 evidence, so long as the default continues. "

25 Section 45. Section 66-5-222 NMSA 1978 (being Laws 1977,

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[bracketed material] = delete

1 Chapter 61, Section 2) is amended to read:
2 "66-5-222. [~~DRIVERS~~] DRIVER EXCLUSION ENDORSEMENT FORM --
3 Any motor vehicle liability policy or personal compensation
4 policy may be endorsed to exclude any named driver from
5 coverage. The endorsement shall be signed by at least one named
6 insured. Endorsements shall be substantially similar to the
7 following form:

8 "[~~DRIVERS~~] DRIVER EXCLUSION ENDORSEMENT

9 Nothing herein contained shall be held to
10 alter, vary, waive or extend any of the terms,
11 conditions, agreements or limits of the
12 undermentioned policy other than as stated
13 herein below.

14 Effective--12:01 a.m., standard time.

15 Attached to and forming part of Policy

16 No. _____ issued to _____

17 by _____ .

18 (name of insured) (insert name of
19 insurance company)

20 In consideration of the premium for which
21 the policy is written, it is agreed that the
22 company shall not be liable and no liability or
23 obligation of any kind shall be attached to the
24 company for losses or damages sustained after
25 the effective date of this endorsement while any

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1 motor vehicle insured hereinunder is driven or
2 operated by _____.

3 (name of excluded driver(s))

4 Date: _____ Name insured(s)

5 _____
6 (signature)

7 _____
8 (signature) ". "

9 Section 46. Section 66-5-224 NMSA 1978 (being Laws 1978,
10 Chapter 35, Section 309, as amended) is amended to read:

11 "66-5-224. ACT NOT TO AFFECT OTHER POLICIES. --

12 A. The Mandatory Financial Responsibility Act does
13 not apply to or affect policies of motor vehicle insurance
14 [~~against liability which~~] that may now or hereafter be required
15 by any other law of New Mexico, except the Personal Choice Auto
16 Insurance Act, and such policies, if they contain an agreement
17 or are endorsed to conform with the requirements of the
18 Mandatory Financial Responsibility Act, ~~may~~ be considered as
19 evidence of financial responsibility under that act.

20 B. The Mandatory Financial Responsibility Act does
21 not apply to or affect policies insuring solely the insured
22 named in the policy against liability resulting from the
23 maintenance or use by persons in the insured's employ or on his
24 behalf of motor vehicles not owned by the insured. "

25 Section 47. Section 66-5-226 NMSA 1978 (being Laws 1955,

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1 Chapter 182, Section 330, as amended) is amended to read:

2 "66-5-226. CASH DEPOSIT AS EVIDENCE. -- Evidence of
3 financial responsibility may be demonstrated by the certificate
4 of the state treasurer that the person named in the certificate
5 has deposited with him [~~sixty thousand dollars (\$60,000)~~] forty
6 thousand dollars (\$40,000) in cash. "

7 Section 48. Section 66-5-228 NMSA 1978 (being Laws 1978,
8 Chapter 35, Section 316, as amended) is amended to read:

9 "66-5-228. SUBSTITUTION OF EVIDENCE. --The division shall
10 consent to the cancellation of any bond [~~or certified motor~~
11 ~~vehicle liability policy~~] or the division shall direct and the
12 state treasurer shall return any money to the person entitled
13 thereto upon the substitution and acceptance of any other
14 adequate evidence of financial responsibility as set forth in
15 [~~Subsection B, C or D of~~] Section 66-5-218 NMSA 1978. "

16 Section 49. Section 66-5-229 NMSA 1978 (being Laws 1978,
17 Chapter 35, Section 318, as amended) is amended to read:

18 "66-5-229. DURATION OF EVIDENCE-- WHEN PROOF MAY BE
19 CANCELED OR RETURNED. --

20 A. The division shall, upon request, [~~consent to the~~
21 ~~immediate cancellation of any bond or certified motor vehicle~~
22 ~~liability policy or the division shall direct and the state~~
23 ~~treasurer shall return to the person entitled thereto any money~~
24 ~~deposited pursuant to the Mandatory Financial Responsibility Act~~
25 ~~as evidence of financial responsibility or the division shall]~~

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[bracketed material] = delete

1 waive the requirement of filing evidence of financial
2 responsibility in any of the following events:

3 (1) after [~~one year~~] two years of providing
4 satisfactory evidence as [~~required~~] specified in [~~Subsection B,~~
5 ~~C or D of~~] Section 66-5-218 NMSA 1978 [~~and upon the deposit with~~
6 ~~the division of evidence of financial responsibility as set~~
7 ~~forth in Subsection A of that section~~];

8 (2) [~~in the event of~~] the death of the person
9 on whose behalf evidence was filed or the permanent incapacity
10 of the person to operate a motor vehicle; or

11 (3) [~~in the event~~] the person who has [~~given~~]
12 filed evidence surrenders his license and registration to the
13 division.

14 B. Provided, however, that the division shall not
15 [~~consent to the cancellation of any bond or the return of any~~
16 ~~money~~] waive the requirement of filing evidence of financial
17 responsibility in the event any action for damages upon a
18 liability covered by the evidence is then pending or any
19 judgment upon any such liability is then unsatisfied or in the
20 event the person who has filed the [~~bond or deposited the money~~]
21 evidence has, within one year immediately preceding the request,
22 been involved as a driver or owner in any motor vehicle accident
23 resulting in injury or damage to the person or property of
24 others. An affidavit of the applicant as to the nonexistence of
25 such facts or that he has been released from all of his

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Underscored material = new
[bracketed material] = delete

1 liability or has been finally adjudicated not to be liable for
2 such injury or damage shall be sufficient evidence thereof in
3 the absence of evidence to the contrary in the records of the
4 division.

5 C. Every owner or operator of a vehicle subject to
6 the requirements of the Mandatory Financial Responsibility Act
7 shall carry evidence of financial responsibility as defined by
8 that act in the vehicle at all times while the vehicle is in
9 operation on the highways of this state. [~~The failure to comply
10 with this subsection shall be a misdemeanor and shall be
11 punishable by the penalty set forth in Section 66-8-7 NMSA 1978;
12 provided that no person charged with violating this section
13 shall be convicted if he produces in court evidence of financial
14 responsibility valid at the time of issuance of the citation.]"~~

15 Section 50. Section 66-5-232 NMSA 1978 (being Laws 1983,
16 Chapter 318, Section 31) is amended to read:

17 "66-5-232. SAMPLING--LETTER TO OWNER.--

18 A. The division, at various times as it considers
19 necessary or appropriate to assure compliance with the Mandatory
20 Financial Responsibility Act, shall select for financial
21 responsibility affirmation an appropriate sample number of the
22 motor vehicles registered in New Mexico. The division is
23 authorized to emphasize, in accordance with rules adopted by the
24 division, for affirmation of financial responsibility,
25 individuals whose affirmations of financial responsibility have

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[bracketed material] = delete

1 previously been found to be incorrect.

2 B. When a motor vehicle is selected for financial
3 responsibility affirmation under Subsection A of this section,
4 the division shall mail an affirmation form to the registered
5 owner of the motor vehicle notifying him that his motor vehicle
6 has been selected for financial responsibility affirmation and
7 requiring him to respond and to affirm, by at least one
8 signature shown on the affirmation form, the existence of
9 evidence satisfying the financial responsibility requirements of
10 the Mandatory Financial Responsibility Act for the motor
11 vehicle.

12 C. Failure by an owner to return the affirmation of
13 financial responsibility to the division within fifteen days
14 after mailing by the division or a determination by the division
15 that an affirmation is not accurate constitutes reasonable
16 grounds under Section 66-5-235 NMSA 1978 to believe that a
17 person is operating a motor vehicle in violation of Section
18 66-5-205 NMSA 1978 or has falsely affirmed the existence of
19 means of satisfying the financial responsibility requirements of
20 the Mandatory Financial Responsibility Act.

21 D. The division may investigate all affirmations
22 required by the Mandatory Financial Responsibility Act returned
23 to the division. If the owner affirms the existence of a motor
24 vehicle liability policy or [~~certified motor vehicle liability~~]
25 personal compensation policy covering the motor vehicle, the

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1 division may forward the affirmation to the listed insurer to
2 determine whether the affirmation is correct. An insurer shall
3 mail notification to the division within twenty working days of
4 receipt of the affirmation inquiry in the event the affirmation
5 is not correct. The notification shall be prima facie evidence
6 of failure to satisfy the financial responsibility requirements
7 of the Mandatory Financial Responsibility Act. The division may
8 determine the correctness of affirmation of other means of
9 satisfying the financial responsibility requirements of that act
10 for the motor vehicle.

11 E. The division may use accident reports as basic
12 material for the construction of its sampling procedure.

13 F. No civil liability shall accrue to the insurer or
14 any of its employees for reports made to the division under this
15 section when the reports are made in good faith based on the
16 most recent information available to the insurer.

17 G. The affirmation form used when sampling shall
18 require the report of the name of the company issuing the
19 policy, the policy number or any other information that
20 identifies the policy. "

21 Section 51. Section 66-5-233 NMSA 1978 (being Laws 1983,
22 Chapter 318, Section 32) is amended to read:

23 "66-5-233. AFFIRMATION FORM -- The affirmation of financial
24 responsibility required under Sections 66-5-208, 66-5-225 and
25 66-5-226 NMSA 1978 shall be in a form prescribed by the division

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1 and shall require an applicant to provide such information as
2 may be required by the division. If a person affirms the
3 existence of a motor vehicle liability policy or [~~certified~~
4 ~~motor vehicle liability~~] personal compensation policy, the
5 affirmation form shall require him to report at least the name
6 of the insurer issuing the policy and the policy number."

7 Section 52. Section 66-5-234 NMSA 1978 (being Laws 1983,
8 Chapter 318, Section 33) is amended to read:

9 "66-5-234. REGISTRATION--APPLICATION AND RENEWAL. --

10 A. The division shall indicate in boldface print on
11 every new application form for registration and every
12 registration form that the owner of the motor vehicle affirms
13 that he is financially responsible within the meaning of the
14 Mandatory Financial Responsibility Act. The payment of the
15 registration fee and acceptance by the division of the
16 application for registration shall be affirmation by the owner
17 of the registered vehicle that he has complied with the
18 requirements of that act.

19 B. The division shall not renew the registration of
20 a motor vehicle unless the owner of the motor vehicle affirms
21 the existence of a motor vehicle liability policy or [~~certified~~
22 ~~motor vehicle liability~~] personal compensation policy covering
23 the motor vehicle or the existence of some other means of
24 satisfying the financial responsibility requirements of the
25 Mandatory Financial Responsibility Act for the motor vehicle."

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[bracketed material] = delete

1 Section 53. Section 66-5-235 NMSA 1978 (being Laws 1983,
2 Chapter 318, Section 34, as amended) is amended to read:

3 "66-5-235. FALSE AFFIRMATION--VIOLATION.--When the
4 division has reasonable grounds to believe that a person is
5 operating a motor vehicle in violation of Section 66-5-205 NMSA
6 1978 or has falsely affirmed the existence of a motor vehicle
7 liability policy, a [~~certified motor vehicle liability~~] personal
8 compensation policy or the existence of some other means of
9 satisfying the financial responsibility requirements of the
10 Mandatory Financial Responsibility Act, the division shall
11 demand satisfactory evidence from the person that the person
12 meets the requirements of that act as provided in Section
13 66-5-233 NMSA 1978. If the person cannot provide evidence of
14 financial responsibility within twenty days after receipt of the
15 division's demand for satisfactory proof of financial
16 responsibility, the division [~~may notify the district attorney~~
17 ~~of the county in which the person resides of the division's~~
18 ~~belief that violations of the Mandatory Financial Responsibility~~
19 ~~Act were or are being committed by that person]~~ shall suspend
20 the person's registration as provided in Section 66-5-236 NMSA
21 1978. "

22 Section 54. Section 66-5-236 NMSA 1978 (being Laws 1983,
23 Chapter 318, Section 35) is amended to read:

24 "66-5-236. SUSPENSION FOR NONPAYMENT OF JUDGMENT OR FOR
25 FALSE AFFIRMATION. --

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[bracketed material] = delete

1 A. Except as otherwise provided, the director shall
2 suspend:

3 (1) the motor vehicle registration for all
4 motor vehicles and the driver's license of any person against
5 whom a judgment has been rendered, the division being in receipt
6 of a certified copy of the judgment on a form provided by the
7 division; or

8 (2) the registration for a period not to exceed
9 one year of a person who is operating a motor vehicle in
10 violation of Section 66-5-205 NMSA 1978 or falsely affirms the
11 existence of a motor vehicle liability policy, a certified motor
12 vehicle liability policy or some other means of satisfying the
13 financial responsibility requirements of the Mandatory Financial
14 Responsibility Act, but only if evidence of financial
15 responsibility is not submitted within [~~thirty~~] twenty days
16 after the date of the mailing of the division's demand therefor
17 [~~under Section 66-5-232 NMSA 1978~~]. The division shall notify
18 the person that he may request a hearing within twenty days
19 after the date of the mailing of the division's demand as
20 provided under this subsection.

21 B. [~~That~~] The registration shall remain [~~so~~]
22 suspended and shall not be renewed, nor shall any registration
23 be issued thereafter in the name of that person, unless and
24 until every judgment is stayed, satisfied in full or to the
25 extent provided in the Mandatory Financial Responsibility Act

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[bracketed material] = delete

1 and evidence of financial responsibility as required in Section
2 66-5-218 NMSA 1978 is provided to the division. "

3 Section 55. Section 66-5-301 NMSA 1978 (being Laws 1978,
4 Chapter 35, Section 325, as amended) is amended to read:

5 "66-5-301. INSURANCE AGAINST UNINSURED AND UNKNOWN
6 MOTORISTS- -REJECTION OF COVERAGE BY THE INSURED. --

7 A. No motor vehicle [~~or automobile~~] liability policy
8 [~~insuring against loss resulting from liability imposed by law~~
9 ~~for bodily injury or death suffered by any person and for injury~~
10 ~~to or destruction of property of others arising out of the~~
11 ~~ownership, maintenance or use of a motor vehicle~~] shall be
12 delivered or issued for delivery in New Mexico with respect to
13 any motor vehicle registered or principally garaged in New
14 Mexico unless coverage is provided therein or supplemental
15 thereto in minimum limits for bodily injury or death and for
16 injury to or destruction of property as set forth in Section
17 66-5-215 NMSA 1978 and such higher limits as may be desired by
18 the insured, but up to the limits of liability specified in
19 bodily injury and property damage liability provisions of the
20 insured's policy, for the protection of persons insured
21 thereunder who are legally entitled to recover damages from
22 owners or operators of uninsured motor vehicles because of
23 bodily injury, sickness or disease, including death, and for
24 injury to or destruction of property resulting therefrom,
25 according to the rules and regulations promulgated by, and under

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1 provisions filed with and approved by, the superintendent of
2 insurance.

3 B. The uninsured motorist coverage described in
4 Subsection A of this section shall include underinsured motorist
5 coverage for persons protected by an insured's policy. For the
6 purposes of this subsection, "underinsured motorist" means an
7 operator of a motor vehicle with respect to the ownership,
8 maintenance or use of which the sum of the limits of liability
9 under all bodily injury liability insurance applicable at the
10 time of the accident is less than the limits of liability under
11 the insured's uninsured motorist coverage. [~~No motor vehicle or
12 automobile liability policy sold in New Mexico shall be required
13 to include underinsured motorist coverage until January 1,
14 1980.~~] A personal compensation insured under the Personal
15 Choice Auto Insurance Act shall not be deemed an underinsured
16 motorist except to the extent a claim is made for uncompensated
17 economic loss against the motorist, as provided in that act,
18 that exceeds the coverage limit under the personal compensation
19 policy.

20 C. Unless a named insured makes an express election to
21 stack uninsured motorist coverage limits for two or more motor
22 vehicles by adding such limits together, the limits shall not be
23 stacked. An insurer shall notify its policyholders in writing
24 that they may elect to stack uninsured motorist coverage limits.

25 [~~C.~~] D. The uninsured motorist coverage shall [provide

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1 ~~an exclusion]~~ exclude coverage of not more than the first [~~two~~
2 ~~hundred fifty dollars (\$250)]~~ five hundred dollars (\$500) of
3 loss resulting from injury to or destruction of property of the
4 insured in any one accident and may exclude coverage of punitive
5 or exemplary damages. The named insured shall have the right to
6 reject the uninsured motorist coverage [as] described in
7 [~~Subsections A and B of~~] this section; provided that unless the
8 named insured requests such coverage in writing, such coverage
9 need not be provided in or supplemental to a renewal policy
10 where the named insured has rejected the coverage in connection
11 with a policy previously issued to him by the same insurer.

12 E. Uninsured motorist coverage for injury to or
13 destruction of property extends only to the vehicle described in
14 the policy and to property not otherwise insured carried in or
15 upon the vehicle."

16 Section 56. TEMPORARY PROVISION--TRANSITION OF RENEWAL
17 POLICIES.--Each automobile insurance policy in effect on the
18 effective date of the Personal Choice Auto Insurance Act shall
19 become subject to the provisions of that act on its first
20 succeeding renewal date. At least thirty days before the policy
21 renewal date, the motor vehicle insurer shall notify the
22 policyholder of the new limitation on tort rights and
23 liabilities, and shall provide information on obtaining the
24 appropriate form to reject the limitation. At that time, the
25 motor vehicle insurer shall also afford the policyholder the

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1 opportunity to purchase the optional coverages specified in
2 Section 4 of the Personal Choice Auto Insurance Act. If the
3 policyholder does not request any optional coverage prior to the
4 renewal date of the policy and does not inform the insurer that
5 he is a tort chooser, the policy shall be reissued as a personal
6 compensation policy with personal compensation benefits equal to
7 the medical payment coverage previously selected by the insured,
8 but in no event less than fifteen thousand dollars (\$15,000).
9 If the insurer does not offer personal compensation benefits in
10 an amount equal to the insured's previous medical payments
11 limit, then the insurer shall provide the available limit that
12 is nearest the previous medical payments limit. All other
13 coverages previously purchased by a named insured shall remain
14 in effect; provided that motor vehicle insurers may delete any
15 coverage that would substantially duplicate personal
16 compensation benefits, including uninsured motorist coverage and
17 disability coverage. If the policyholder requests any optional
18 coverage, the requested coverage shall be effective on the
19 reissue date of the policy if the request is received prior to
20 the renewal date of the policy. If received on or after the
21 reissue date, the requested coverage shall be effective at 12:01
22 a.m. on the day after the request is received.

23 Section 57. TEMPORARY PROVISION-- COST SAVINGS TO
24 CONSUMERS-- CONDITIONAL REPEAL. --

25 A. Each motor vehicle insurer that writes motor

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1 vehicle insurance policies shall file policy forms and rates for
2 personal compensation policies and motor vehicle liability
3 policies, including tort coverage, with the superintendent of
4 insurance no later than sixty days before the effective date of
5 the provisions of the Personal Choice Auto Insurance Act, for
6 review and approval pursuant to Chapter 59A, Article 17 NMSA
7 1978.

8 B. Each motor vehicle insurer's statewide average
9 premium for a personal compensation policy with minimum required
10 benefits during the first year following the effective date of
11 the Personal Choice Auto Insurance Act shall be at least thirty
12 percent less than the motor vehicle insurer's statewide average
13 premiums for calendar year 1996 for mandatory insurance
14 coverage, unless the motor vehicle insurer first demonstrates at
15 a rate hearing that such a decrease will result in inadequate
16 rates. For the purposes of this subsection, "mandatory
17 insurance coverage" means the minimum limits for bodily injury
18 and property damage liability set forth in Section 66-5-215 NMSA
19 1978 immediately prior to the effective date of this act and the
20 minimum uninsured and underinsured motorist coverage set forth
21 in Section 66-5-301 NMSA 1978.

22 C. If a combination of insurers selling more than
23 fifty percent of the automobile insurance in this state, as
24 measured by direct earned premium for calendar year 1996, cannot
25 reduce their premiums as required by Subsection B of this

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1 section, because such a reduction would result in inadequate
2 rates as determined by the superintendent of insurance, this act
3 is repealed effective one year after the effective date of its
4 provisions.

5 D. Prior to the effective date of the provisions of
6 the Personal Choice Auto Insurance Act, the superintendent of
7 insurance may adopt and promulgate regulations, approve proposed
8 policy forms and review and approve motor vehicle insurance
9 rates for coverages to be made available under that act.

10 Section 58. REPEAL. -- Sections 66-5-219, 66-5-221 and
11 66-5-223 NMSA 1978 (being Laws 1955, Chapter 182, Section 321
12 and Laws 1978, Chapter 35, Sections 306 and 308, as amended) are
13 repealed.

14 Section 59. SEVERABILITY. --

15 A. Except as provided otherwise in Subsection B of
16 this section, if any provision of the Personal Choice Auto
17 Insurance Act or the application thereof to any person,
18 organization or circumstance is held to be unconstitutional or
19 otherwise invalid, the remainder of that act and the application
20 of such provision to other persons or circumstances shall not be
21 affected.

22 B. If Section 12 of the Personal Choice Auto Insurance
23 Act is found to be unconstitutional or invalid, in whole or in
24 part, it is to be conclusively presumed that the legislature
25 would not have enacted the remainder of this act without such

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~~[bracketed material] = delete~~

1 limitations and this act shall be invalid.

2 Section 60. EFFECTIVE DATE. --The effective date of the
3 provisions of:

4 A. Sections 1 through 56 and 58 of this act is July 1,
5 1998; and

6 B. Sections 57 and 59 of this act is July 1, 1997.

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